

SOLICITATION/CONTRACT/ORDER FOR COMMERCIAL ITEMS OFFEROR TO COMPLETE BLOCKS 12, 17, 23, 24, & 30				1. REQUISITION NUMBER		PAGE 1 OF 15	
2. CONTRACT NO. N00104-02-A-ZE77		3. AWARD.EFFECTIVE DATE FEB 14 2002		4. ORDER NUMBER		5. SOLICITATION NUMBER	
7. FOR SOLICITATION INFORMATION CALL:		a. NAME		b. TELEPHONE NUMBER (No collect calls)		8. OFFER DUE DATE/ LOCAL TIME	
9. ISSUED BY DEPARTMENT OF THE NAVY NAVAL INVENTORY CONTROL POINT 5450 CARLISLE PIKE MECHANICSBURG, PA 17055-0788 POC: S. JOHNSON/CODE 0272.5 PHONE: (717) 605-1548 EMAIL: SYLVIA_C_JOHNSON@ICPMECH.NAVY.MIL		CODE N00104		10. THIS ACQUISITION IS <input type="checkbox"/> UNRESTRICTED <input type="checkbox"/> SET ASIDE: %FOR <input type="checkbox"/> SMALL BUSINESS <input type="checkbox"/> SMALL DISADV. BUSINESS <input type="checkbox"/> 8(A) SIC: SIZE STANDARD:		11. DELIVERY FOR FOB DESTINATION UNLESS BLOCK IS MARKED <input type="checkbox"/> SEE SCHEDULE <input type="checkbox"/> 13a. THIS CONTRACT IS A RATED ORDER UND DPAS (15 CFR 700) 13b. RATING 14. METHOD OF SOLICITATION <input type="checkbox"/> RFQ <input type="checkbox"/> IFB <input type="checkbox"/> RFP	
15. DELIVER TO SPECIFIED ON EACH ORDER		CODE		16. ADMINISTERED BY BASIC AGREEMENT - SAME AS BLOCK 9 ORDERS - AS CITED ON EACH INDIVIDUAL ORDER			
17a. CONTRACTOR/OFFEROR SAP PUBLIC SECTOR AND EDUCATION, INC. RONALD REAGAN BUILDING INTERNATIONAL TRADE CENTER 1300 PENNSYLVANIA AVENUE NW SUITE 500/NORTH TOWER/GREY WASHINGTON, DC 20004		CODE 1JGP2		FACILITY		18a. PAYMENT WILL BE MADE BY SPECIFIED ON EACH ORDER	
<input type="checkbox"/> 17b. CHECK IF REMITTANCE IS DIFFERENT AND PUT SUCH ADDRESS IN OFFER		18b. SUBMIT INVOICES TO ADDRESS SHOWN IN BLOCK 18a UNLESS BLOCK BELOW IS CHECKED. <input type="checkbox"/> SEE ADDENDUM					
19. ITEM NO.	20. SCHEDULE OF SUPPLIES/SERVICES			21. QUANTITY	22. UNIT	23. UNIT PRICE	24. AMOUNT
	GSA SCHEDULE GS-35F-5891H APPLIES (Attach Additional Sheets as Necessary)						
25. ACCOUNTING AND APPROPRIATION DATA N/A - SPECIFIED ON EACH ORDER						26. TOTAL AWARD AMOUNT (For Govt. Use Only)	
<input type="checkbox"/> 27a. SOLICITATION INCORPORATES BY REFERENCE FAR 52.212-1, 52.212-4. FAR 52.212-3 AND 52.212-5 ARE ATTACHED. ADDENDA <input type="checkbox"/> ARE <input type="checkbox"/> ARE NOT ATTACHED. <input checked="" type="checkbox"/> 27b. CONTRACT/PURCHASE ORDER INCORPORATES BY REFERENCE FAR 52.212-4, FAR 52.212-5 IS ATTACHED. ADDENDA <input checked="" type="checkbox"/> ARE <input type="checkbox"/> ARE NOT ATTACHED.							
28. CONTRACTOR IS REQUIRED TO SIGN THIS DOCUMENT AND RETURN <u>1</u> COPY TO <input checked="" type="checkbox"/> ISSUING OFFICE. CONTRACTOR AGREES TO FURNISH AND DELIVER ALL ITEMS SET FORTH OR OTHERWISE IDENTIFIED ABOVE AND ON ANY ADDITIONAL SHEETS SUBJECT TO THE TERMS AND CONDITIONS SPECIFIED HEREIN.				29. AWARD OF CONTRACT: REFERENCE _____ OFFER <input type="checkbox"/> DATED _____ YOUR OFFER ON SOLICITATION (BLOCK 5). INCLUDING ANY ADDITIONS OR CHANGES WHICH ARE SET FORTH HEREIN, IS ACCEPTED AS TO ITEMS:			
30a. SIGNATURE OF OFFEROR/CONTRACTOR <i>Barbara Rivera</i>				31a. UNITED STATES OF AMERICA (SIGNATURE OF CONTRACTING OFFICER) <i>R. L. Klinger</i>			
30b. NAME AND TITLE OF SIGNER (TYPE OR PRINT) Barbara Rivera VICE PRESIDENT		30c. DATED SIGNED FEB 14 2002		31b. NAME OF CONTRACTING OFFICER (TYPE OR PRINT) R. L. KLINGER CONTRACTING OFFICER		31c. DATE SIGNED FEB 14 2002	
32a. QUANTITY IN COLUMN 21 HAS BEEN <input type="checkbox"/> RECEIVED <input type="checkbox"/> INSPECTED <input type="checkbox"/> ACCEPTED, AND CONFORMS TO THE CONTRACT, EXCEPT AS NOTED				33. SHIP NUMBER <input type="checkbox"/> PARTIAL <input type="checkbox"/> FINAL		34. VOUCHER NUMBER	
32b. SIGNATURE OF AUTHORIZED GOVT REPRESENTATIVE				32c. DATE		35. AMOUNT VERIFIED CORRECT FOR	
41a. I CERTIFY THIS ACCOUNT IS CORRECT AND PROPER FOR PAYMENT				36. PAYMENT <input type="checkbox"/> COMPLETE <input type="checkbox"/> PARTIAL <input type="checkbox"/> FINAL		37. CHECK NUMBER	
41b. SIGNATURE AND TITLE OF CERTIFYING OFFICER				38. S/R ACCOUNT NUMBER		39. S/R VOUCHER NUMBER	
				42a. RECEIVED BY (Print)		40. PAID BY	
				42b. RECEIVED AT (Location)			
				42c. DATE REC'D (YY/MM/DD)		42d. TOTAL CONTAINERS	

AUTHORIZED FOR LOCAL REPRODUCTION

STANDARD FORM 1449 (10-95)
Prescribed by GSA - FAR (48 CFR) 53.212

TERMS AND CONDITIONS

Pursuant to General Services Administration (GSA) Federal Supply Services (FSS) Contract Number GS-35F-5891H, SAP Public Services, Inc. (SAP) agrees to the following terms of a Blanket Purchase Agreement (BPA) with the Naval Inventory Control Point (NAVICP) to provide Software licenses, software maintenance support, software technical support, and software training services to the Department of Defense through orders placed against this BPA. All orders placed against this BPA are subject to the terms and conditions of the FSS Contract and the special BPA terms defined in Attachment A.

The following products and services are available under this BPA:

- 1.0 Software under SIN 132-33
- 2.0 Installation and Implementation Technical Support under SIN 132-33
- 3.0 Maintenance under SIN 132-34
- 4.0 SAP Training Services under SIN 132-50

The following attachments are incorporated in this BPA:

- Attachment A Special Terms Applicable to this BPA
- Attachment B BPA Discount Schedule
- Attachment C Outsourcing Confidentiality Agreement

1. Delivery Orders. The scope of this effort is defined in the FSS Schedule. Delivery requirements will be stipulated on Delivery Orders. An order, either a Standard Form (SF) 1449 or Department of Defense (DD) Form 1155, is prepared by the Government Ordering Officer (a duly warranted Contracting Officer whose warrant authorizes purchases from the GSA Schedule) in accordance with the terms and conditions of this BPA and the GSA Schedule. For any Delivery Order placed by one agency for another under a cross-servicing arrangement, the Delivery Order must clearly state the name of the agency that is acquiring the Software license and related Services. Orders may be placed by facsimile or paper. Ordering instructions are located at <http://www.don-imit.navy.mil/esi/>.

For Professional Services orders the following shall also be included:

- a. Description of Services
- b. Mutually Agreed Upon Statement of Work
- c. Period of Performance
- d. Place of Performance

2. Extent of Obligation. The Government is obligated only to the extent of authorized purchases actually made under this BPA.

3. Funds Obligation. The BPA will not obligate any funds. Funds will be obligated on each delivery order.

4. BPA Term. This BPA is effective for the term of the GSA FSS Schedule. The BPA will be reviewed annually and is contingent upon the Contractor maintaining or renewing a GSA FSS Schedule. The BPA may be terminated for convenience by either party with ninety (90) days written notice.

5. Authorized Users. The BPA is open for ordering by all of the Department of Defense (DoD). For purposes of this agreement, DoD is defined as: all DoD Components and their employees, including Reserve Component (Guard and Reserve) and the U.S. Coast Guard; other Government employees assigned to and

working with DoD; non-appropriated funds instrumentalities such as NAFI employees; Intelligence Community (IC) covered organizations to include all DoD Intel System member organizations and employees, but not the CIA nor other IC employees unless they are assigned to and working with DoD organizations; DoD Contractors authorized in accordance with the FAR; and authorized Foreign Military Sales (FMS).

6. Pricing Terms. Standard unit prices and rates under this BPA are based on the FSS Contract pricing currently in effect at the time a Delivery Order is placed. The prices will be reviewed annually or as required to determine whether a reduction is appropriate in accordance with the price reduction provisions of the agreement. A 2.0% Acquisition, Contracting, and Technical (ACT) Fee is included in the prices. The contractor is responsible for the payment of all fees that are included in the product pricing (i.e. GSA, ACT), as calculated on the customer orders. Payment of ACT Fees shall be made in accord with Section 13.2 of this BPA.

6.1 Volume Level Discount Prices. Volume level price discounts are provided in Attachment B and are discussed in paragraph 1.0 of Attachment A.

6.2 Prompt Pay Discount. Prompt pay discounts are not offered.

6.3 Price Reduction (Most Favored Customer Prices). The prices under this BPA shall be at least as low as the prices that SAP Public Services, Inc. has under any other GSA FSS or BPA vehicle under like terms and conditions. If at any time the prices under any other GSA FSS or BPA vehicle become lower than the prices in this BPA, this BPA will be modified to include the lower prices.

7. Software License. Software licenses purchased under SIN 132-33 are perpetual software licenses subject to the licensing provisions and terms of the FSS contract and the special terms of Attachment A hereto.

8. Installation and Implementation Technical Support. Technical support services purchased under SIN 132-33 are subject to the provisions and terms of the FSS contract and the special terms of Attachment A hereto.

9. Support and Maintenance. Support and Maintenance services purchased under SIN 132-34 are subject to the provisions and terms of the FSS contract and the special terms of Attachment A hereto.

10. Training Services. Training services purchased under SIN 132-50 are subject to the provisions and terms of the FSS contract and the special terms of Attachment A hereto.

11. Delivery. Delivery of products and services ordered under this BPA shall be in accordance with the terms of the FSS contract. Deliveries will be made to the address specified on the delivery orders issued against the BPA.

12. Invoicing and Payment

12.1 Invoicing. The requirements of a proper invoice are as specified in the FSS contract. Invoices will be submitted to the address specified on the delivery orders issued against the BPA.

12.2 Payment. Payment shall be made for items accepted by the Government specified in each delivery order. Acceptance and Payment procedures are in accordance with the GSA Contract. At the option of the Government payments under this BPA may be made by check, electronic funds transfer, or the automated clearinghouse.

13. Fees and Payments

13.1 GSA Fee. The unit prices include the applicable GSA IFF fee. The contractor is responsible for payment of this fee in accordance with applicable GSA instructions.

13.2 Acquisition, Contracting, and Technical (ACT) Fee. The cost of awarding and administering this BPA is included in the prices charged to ordering activities. The total Acquisition, Contracting, and Technical (ACT) fee to be collected by the Contractor is 2%. Remittance of the ACT fee shall be made on a calendar quarterly basis (i.e. January – March, April – June, July – September, and October – December) and is due thirty (30) days following the completion of the reporting period. Negative reports are required.

The Navy, Army and Air Force are participating in a fee-sharing program. The contractor shall collect the 2% ACT fee and distribute in accordance with the following summary table. Distribution and remittance procedures are described in detail below. Fee sharing shall be determined by the End User Agency or Service appearing in Column 3 of the monthly Report of Sales. This field shall be notated DoN, DA, DAF or DoD as appropriate.

FEE SHARING SUMMARY

	NAVY & DOD	ARMY	AIR FORCE	TOTAL ACT FEE
	Remit to: FMO (SPAWAR)	Remit to: DFAS Pensacola (DFAS-PE FD-SCP)	Remit to: DFAS Pensacola (DFAS OPLOC/PE)	
Fee Applicable to: Navy & Other DoD Sales (DoN, DoD)	2%	0%	0%	= 2%
Fee Applicable to: Army Sales (DA)	1%	1%	0%	= 2%
Fee Applicable to: Air Force Sales (DAF)	1%	0%	1%	= 2%

DISTRIBUTION AND REMITTANCE PROCEDURES

ALL SALES:

The amount of ACT Fee due the FMO shall be calculated at 1% for Army sales, 1% for Air Force sales and 2% for all other sales.

Remit ACT Fee to the Financial Management Office (FMO) by corporate or cashier's check made payable to "Treasurer of the United States".

Checks must include the following information to ensure proper crediting of the payment:

BPA N00104-02-A-ZE77

DoD SAP Enterprise Software Agreement

ACT Fee

If using overnight or express mail, send check to:
SPAWAR Systems Center Charleston
Attn: Jakki Rightmeyer
Norfolk Office
Code 645.2, Building V-53
9456 Fourth Avenue
Norfolk, VA 23511-2130

If using regular mail, send check to:
SPAWAR Systems Center Charleston
Attn: Jakki Rightmeyer
Norfolk Office
Code 645.2, Building V-53
P.O. Box 1376
Norfolk, VA 23501-1376

ARMY SALES:

The amount of ACT Fee due DFAS Pensacola shall be calculated at 1% of all Army sales.

Remit ACT Fee to DFAS Pensacola by corporate or cashier's check made payable to "Treasurer of the United States" notated with the following information:

BPA N00104-02-A-ZE77

SCP Fee Reimbursement

***Checks must be accompanied by a transmittal letter (sample enclosed) that cites the applicable accounting data to ensure proper crediting of the payment.

Send check and transmittal letter to:
Defense Finance & Accounting Service
Code FD
Attn: DFAS-PE (FD-SCP)
130 West Avenue, Suite A
Pensacola, FL 32508

Mail a copy of the check and letter to:
CECOM-Systems Management Center
U.S. Army Small Computer Program
AMSEL-DSA-SCP (Attn: Cheryl Gregory)
Fort Monmouth, NJ 07703-5805

AIR FORCE SALES:

The amount of ACT Fee due DFAS Pensacola shall be calculated at 1% of all Air Force sales.

Remit ACT Fee to DFAS Pensacola by corporate or cashier's check made payable to "Treasurer of the United States" notated with the following information:

BPA N00104-02-A-ZE77

ESI-SW Fee Sharing

*** Checks must be accompanied by a transmittal letter (sample enclosed) that cites the applicable accounting data to ensure proper crediting of the payment.

Send check and transmittal letter to:
DFAS OPLOC/PE
Building 603-2, Code FDA-SSG
130 West Avenue, Suite A
Pensacola, FL 32508-5120

Fax a copy of the check and letter to:
HQ SSG/ITS
Attn: Bob Hamrick, Bldg 884, Rm 1437
501 East Moore Drive
Maxwell AFB-Gunter Annex, AL 36114-3004
FAX: (334) 416-5796

14. Reports

14.1 Report of Sales. Consistent with Clause C.22 of the GSA Schedule, a Report of Sales as described herein shall accompany the remittance of the ACT Fees to enable verification of the fee amounts rendered. Submission of the Report of Sales shall be made on a quarterly basis. In addition to the regular quarterly submissions, a Report of Sales shall also accompany the ACT Fee payment. The Report of Sales shall be submitted to the FMO, PMO and PCO in electronic format within thirty (30) days following the completion of the quarterly reporting period. The Report of Sales shall contain, but is not limited to, the following data: a list of orders by Ordering Activity; BLIN's ordered; BLIN prices; value of orders; status of orders; and cumulative sales data for the month, quarter, year, and BPA to date. Contractor agrees to assist the PMO to the extent possible with related additional, non-routine requests for information and data calls, including the

submission of brief monthly updates to the PMO and PCO. The monthly update will provide no other detail than a breakdown of the total sales (orders received) for the month by amount and customer.

14.2 Records. The Contractor shall maintain archival copies of all orders for the life of the BPA. Copies shall be made available to the Government upon request.

15. Compliances

15.1 YEAR 2000 Compliance. All products provided under this BPA shall be Y2K compliant as defined in FAR 39.002.

15.2 JTA Compliance. All Software products offered shall comply with the appropriate Publicly Available Standards (PAS) (i.e., TIA, EIA, ANSI, IEEE, ISO) and the applicable DoD information technology standards contained in the Joint Technical Architecture (JTA). At a minimum, all Software delivered must be Level 5 Defense Information Infrastructure Common Operating Environment (DII COE) compliant as defined in the Integration and Runtime Specification (I&RTS), Appendix B: Compliance Checklists. More information on DoD standards can be found at <http://www.itsi.disa.mil>.

15.3 Section 508 of the Rehabilitation Act Compliance. Orders issued under this BPA must consider the requirements of FAR 39.2 which implements section 508 of the Rehabilitation Act of 1973 (29 U.S.C. 794d), and the Architectural and Transportation Barriers Compliance Board Electronic and Information Technology (EIT) Accessibility Standards (36 CFR part 1194). Information on SAP product accessibility can be found at: <http://www.saplabs.com/accessibility/>.

16. ITEC Direct. ITEC Direct is the Navy's World Wide Web accessible shopping and order processing tool and can be viewed at <http://www.itec-direct.navy.mil>. This BPA will be placed in the DoN's Information Technology Electronic Commerce (ITEC Direct) system as part of the DoN ITEC Direct Project. The BPA will be posted to the DoN CIO Approved Vehicles section. No pricing, search or comparison data will be available other than what is provided in the vehicle itself. A link to the OEM Section 508 web page will also be required. The contractor shall ensure that any data and information provided to ITEC Direct is current, accurate, complete, and relevant to the acquisition vehicle. This BPA may also be loaded into the electronic catalog systems of other DoD agencies.

17. Users' Ordering Guide. The Contractor shall develop a Users' Ordering Guide in coordination with the Government. The Ordering Guide is required within 30 days of BPA issuance and made available on the Contractor's home page. This guide shall be continuously updated as required. The guide shall contain all information necessary for geographically dispersed activities to place orders, including, as a minimum:

- a. Complete list of products available, with appropriate BLINs and associated prices
- b. Government and Contractor Points of Contact
- c. Description of the ordering process
- d. Program Terms and Conditions
- e. License Terms and Conditions
- f. Information necessary to complete a DD350

18. Marketing. The Contractor must dedicate reasonable resources to this effort and work to market and advertise this agreement consistent with the GSA Schedule. Possible actions include: advertising resultant vehicles on the contractor's Internet site and advertising the agreement at relevant trade shows and news media geared to Government/DoD IT people.

19. Program Management Reviews (PMR). The Contractor shall participate in regular reviews of the progress of the contract. Reviews shall be held at least twice yearly as scheduled by the PMO, or as may be otherwise agreed. During these reviews the Contractor shall report on, among other things, status of BPA sales, marketing and any outstanding issues concerning the BPA. PMR agenda and presentation format shall be provided by the PMO prior to each PMR. Travel expenses are the responsibility of the Contractor.

20. Technology Improvement. The Government may solicit and the BPA holder is encouraged to propose independently, technology improvements to the BPA. Proposals shall be submitted by the BPA holder and include a description of the products and/or services, an electronic copy of the pricing tables, technical literature that describes the products and/or services, and evidence of inclusion on GSA schedule.

21. Suspension. There may be occasions where the Government may suspend ordering (by BLIN up to and including the entire BPA.) If a suspension is announced, the Contractor shall adhere to this suspension by not accepting/processing delivery orders for the suspended item(s).

22. Precedence. The terms and conditions included in this BPA apply to all orders placed against it. In the event of an inconsistency between the provisions of the BPA and the Contractor's invoice, the provisions of the BPA will take precedence.

23. BPA Points of Contact.

Contracting Office:

Point of Contact:

Naval Inventory Control Point
Code 0272.5, Building 407
5450 Carlisle Pike
Mechanicsburg, PA 17055-0788

POC: Sylvia Johnson
Phone: (717) 605-1548
Fax: (717) 605-4600
Email: sylvia_c_johnson@icpmech.navy.mil

Procuring Contracting Officer (PCO):

Naval Inventory Control Point
Code 0272
5450 Carlisle Pike
Mechanicsburg, PA 17055-0788

PCO: Rod Klinger
Phone: (717) 605-3824
Fax: (717) 605-4600
Email: rodney_L_klinger@icpmech.navy.mil

Program Management Office (PMO):

Program Manager (PM):

DoN IT Umbrella Program Management Office
SPAWAR Systems Center San Diego
Code D829
53560 Hull Street
San Diego, CA 92152-5001

PM: Linda Greenwade
Phone: (619) 524-9616
Fax: (619) 524-9678
Email: lindag@spawar.navy.mil

or Alternate Point of Contact:

DoN IT Umbrella Program Management Office
SPAWAR Systems Center San Diego
Code D829
53560 Hull Street
San Diego, CA 92152-5001

POC: Barbara Johnson
Phone: (619) 524-9607
Fax: (619) 524-9678
Email: barbaraj@spawar.navy.mil

Financial Management Office (FMO):

SPAWAR Systems Center Charleston
Norfolk Office
Code 645.2, Building V-53
P.O. Box 1376
Norfolk, VA 23501-1376

If overnight or express mail is used, the correct address is:

SPAWAR Systems Center Charleston
Norfolk Office
Code 645.2, Building V-53
9456 Fourth Avenue
Norfolk, VA 23511-2130

FMO: Jakki Rightmeyer
Phone: (757) 445-1493
Fax: (757) 445-2103
Email: rightmej@spawar.navy.mil

Customer Point of Contact: (To be specified on each order.)

**BEST VALUE
BLANKET PURCHASE AGREEMENT
FEDERAL SUPPLY SCHEDULE
NAVAL INVENTORY CONTROL POINT**

In the spirit of the National Performance Review, the Naval Inventory Control Point (NAVICP) and SAP Public Services, Inc. enter into a cooperative agreement to further reduce the administrative costs of acquiring commercial items from the General Service Administration (GSA) Federal Supply Schedule Contract GS-35F-5891H.

Federal Supply Schedule Contract BPAs eliminate contracting and open market costs such as: search for sources, the development of technical documents, solicitations, and the evaluation of bids and offers.

This BPA will further decrease costs, reduce paper work, and save time by eliminating the need for repetitive, individual purchases from the schedule contract. The end result is to create a purchasing mechanism for the Government that works better and costs less.

ATTACHMENT A
SPECIAL TERMS APPLICABLE TO THIS BPA

1.0 BPA Discount Structure

1.1 Software Products (SIN 132-33)

1.1.1 Aggregate Total Order Discount Structure. Software discounting under this BPA is based on the Aggregate Total Order amount, which is defined as the cumulative total List Price of all Software orders placed against this BPA. Orders for non-software products and services, and open market items and products not offered through the GSA Contract are not counted toward the Aggregate Total Order amount for purposes of establishing the Software discount levels in Attachment B. The Software List Price is defined as the published price, before discounting, as published in the GSA Contract at the time the order is placed. Included in the Aggregate Total Order amount will be a List Price \$344,156,157 for DoD Software orders placed prior to the establishment of this BPA as mutually agreed. Attachment B provides the BPA discount structure and volume levels for Software product orders under this BPA.

1.1.2 Discounting Not Retroactive. The BPA discounting in 1.1.1 above will not apply retroactively to DoD orders placed prior to establishment of this BPA. Pre-BPA orders are included in the Aggregate Total Order amount only for purposes of establishing the discount structure for this BPA.

1.1.3 Software Products Excluded from BPA Discounting. SAP may from time to time add Software products for offer under SIN 132-33 of the SAP GSA Contract that, due to third-party pricing limitations, are not subject to the BPA Discount published in Attachment B. Such excluded products shall be offered at the standard GSA Contract discounts only, however the List Price amount of such excluded products ordered under this BPA shall be included in the computation of the Aggregate Total Order amount for purposes of establishing the discount level in Attachment B. It is anticipated that such excluded products would fall only under the "Third Party" product section of the SAP GSA contract pricelist, and products under the "R/3" and "mySAP.com" headings are eligible for the BPA Discount in Attachment B. SAP shall notify the BPA Contracting Office when an ineligible product is added to the SAP GSA Contract.

1.1.4 Discount Treatment of Conversions/Upgrades and Credits for Prior Purchases. Conversions or upgrades purchased under this BPA (e.g. a customer conversion from an SAP R/3 system to an SAP mySAP.com system) will be treated as new orders eligible for discounting in accordance with Attachment A. Orders for conversions/upgrades are subject to the GSA Contract conversion pricing and credit policies currently in effect at the time an order is placed. For purposes of tracking the Aggregate Order totals for conversion/upgrade orders, the incremental List Price shall be computed by subtracting the List Price of the prior purchase from the List Price of the conversion/upgrade purchase.

1.1.5 Aggregate Order Tracking. SAP is responsible for maintaining tracking records of aggregate list price totals for orders placed including the installed base, total number of licenses, product type, Users and User type, and maintenance agreements. This information will be reported in a format and at a frequency to be mutually agreed.

1.1.6 Software License Transfer Rights. As noted below, SAP will permit the transfer, at no additional license fee, of Software licenses ordered under this BPA or incorporated in this BPA among agencies within DoD, or permit the outsourcing of Software purchased under this BPA to contractors supporting DoD, subject to the execution of appropriate documents as between SAP and the transferee. Such transfer of Software licenses will be permitted for a period of up to seven (7) years from the date of original license under the following circumstances: (i) transfer of an entire work function between DoD agencies; (ii) outsourcing of an entire work function to a Government prime contractor; and (iii) transfer within the DoD service branch where the original license was purchased in downsizing situations. None of the transfer rights contemplated under this paragraph include rights to resell licensed Users or licensed Software. SAP will in good faith negotiate all other transfer requests.

1.1.7 Special Terms Applicable to Outsourcing Arrangements. The Ordering Agency may permit a services provider identified in writing to SAP in advance, to access the Software solely for the purpose of providing hosting, facility, systems, or disaster recovery services to Licensee in connection with the business of the Ordering Agency for which the Software is licensed, provided: (i) SAP, the Ordering Agency, and such services provider execute a Confidentiality Agreement in the form attached as Attachment C prior to such access; (ii) all employees of such services provider authorized to access the Software shall be licensed as Named Users; (iii) such services provider shall be permitted to Use the Software solely to operate the business of the Ordering Agency (or in the case of a disaster recovery vendor, to provide disaster recovery services only); (iv) under no circumstances may such services provider Use the Software to operate or provide processing services to any other party, or in connection with such services provider's own business operations; and (v) the Ordering Agency shall be responsible for any additional Software, migration tools, or third party software needed to effect such transition.

1.1.8 Minimum Order Requirement. A minimum requirement of 200 Named Users per order is required for Software orders placed under this BPA.

1.2 Installation and Implementation Technical Support (SIN 132-33)

1.2.1 SAP installation and implementation professional technical support services under this BPA are offered at the standard GSA Contract rates in effect at the time an order is placed. Subject to paragraph 2.0 below, additional discounting may be negotiated based on circumstances of individual orders.

1.2.2 All installation and implementation professional technical support services will be performed on a Time and Materials basis.

1.3 Maintenance (SIN 132-34)

1.3.1 Attachment B provides the BPA discount structure and volume levels for Software Maintenance. Maintenance will be computed using the GSA Contract maintenance percentage factor in effect at the time an order is placed against this BPA.

1.3.2 Annual Maintenance Fees for Software orders placed under this BPA will be computed by applying the GSA Contract maintenance percentage factor to a base of the net license fee after standard volume discount, GSA discount, and additional BPA discount are applied. If maintenance is purchased separately (after purchase of license), the GSA Contract maintenance

percentage factor will be applied to the net license fees as discounted in the original purchase, and applicable accrued maintenance fees and/or reinstatement fees will be assessed.

1.3.3 Treatment of Conversions/Upgrades. Maintenance base computations for conversion/upgrade orders are based on the amount before any credit for prior purchase.

1.4 Training Services (SIN 132-50)

SAP training services under this BPA are offered at the standard GSA Contract rates and discounts in effect at the time an order is placed. Subject to paragraph 2.0 below, additional discounting may be negotiated based on circumstances of individual orders.

2.0 Special Discounts and Special Circumstances

SAP may negotiate special discounts and terms for specific orders placed under this BPA based on extraordinary volume or other special circumstances.

ATTACHMENT B
BPA DISCOUNT SCHEDULE

Software Products (SIN 132-33)

BPA Discount Schedule		
Aggregate Total Order Amount (in USD)	Standard GSA Discount	BPA Discount
> \$300 M	70%	86%
> \$400 M	70%	87%
> \$500 M	70%	88%
> \$750 M	70%	89%
> \$1,000 M	70%	90%
> \$1,500 M	70%	91%
> \$2,000 M	70%	92%
> \$2,500 M	70%	93%
> \$3,000 M	70%	94%
> \$5,000 M	70%	95%

Installation and Implementation Technical Support (SIN 132-33)

Standard GSA Contract rates apply to this item.

Software Maintenance (SIN 132-34)

Aggregate Total Order Amount (in USD)	BPA Discount Schedule	
	Standard GSA Maintenance Base	BPA Maintenance Base
All Orders	Net License Fee after Volume Discount and GSA Discount	Net License Fee after Volume Discount, GSA Discount, and Additional Discount

SAP Training Services (SIN 132-50)

Standard GSA Contract rates apply to this item.

ATTACHMENT C

OUTSOURCING CONFIDENTIALITY AGREEMENT

This Confidentiality Agreement ("Agreement") made this ____th day of ____, 200__ between SAP Public Services, Inc. having its principal place of business at The Ronald Reagan Building, International Trade Center, 1300 Pennsylvania Avenue, NW, Suite 1300 / North Tower / Gray, Washington, DC 20004 (hereinafter referred to as "SAP"), _____, having its principal place of business at _____ (hereinafter referred to as "Vendor") and _____, having its principal place of business at _____, (hereinafter referred to as "Ordering Agency").

All terms as set forth in the SAP's GSA Schedule Contract No. GS-35F-5891H ("GSA Contract") and in Blanket Purchase Agreement No. N00104-02-A-ZE77 ("BPA") and referred to herein, shall have the same meaning as set forth in the GSA Contract and BPA unless otherwise modified herein.

WHEREAS, SAP is in the business of providing proprietary software, documentation, and related services to its customers;

WHEREAS, Pursuant to the BPA order, between SAP and Ordering Agency, SAP has licensed its Software, Documentation and other Proprietary Information to Ordering Agency for Use in its business operations;

WHEREAS, Ordering Agency has engaged Vendor to perform certain facilities and/or information systems management services as set forth in the _____ Agreement between Vendor and Ordering Agency dated _____ ("Services") that will require Vendor to have access to the Software; and

WHEREAS, SAP and/or Ordering Agency will disclose to Vendor the Software, whether in source or object code, including unique concepts or techniques embodied therein, Documentation, any Third-Party Database or Third-Party Software sublicensed from SAP, and any other Proprietary Information for the sole purpose of allowing Vendor to provide the Services to Ordering Agency;

NOW THEREFORE, in consideration of disclosure to Vendor of such Proprietary Information, and intending to be legally bound, the parties agree as follows:

1. **Permissible Users.**

Vendor agrees that it will use the Proprietary Information solely for providing the Services to Ordering Agency. Vendor will not use the Proprietary Information to process its own business information or to provide processing or facilities management or other services to any party other than Ordering Agency.

2. **SAP Proprietary Information.**

- (a) Vendor acknowledges SAP's assertion that ownership of and title in and to all intellectual property rights, including patent, trademark, service mark, copyright, and trade secret rights, in the Proprietary Information are and shall remain in SAP and its parent companies (SAP America, Inc. and SAP AG) and their respective licensors. Vendor acquires only the right to use the Proprietary Information under the terms and conditions of this Agreement and does not acquire any ownership rights or title in or to the Proprietary Information and that of their respective licensors.
- (b) SAP agrees that no restrictions are made upon Vendor with respect to any Proprietary Information that: (a) is already rightfully possessed by Vendor without obligation of confidentiality; or (b) is developed independently by Vendor without breach of this Agreement; or (c) is rightfully received by Vendor from a third party without obligation of Confidentiality; or (d) is, or becomes, publicly available without breach of this Agreement.
- (c) Vendor shall not remove any proprietary, copyright, trademark, or service mark legend from the Software, Documentation or other provided Proprietary Information.
- (d) Vendor shall maintain a log of the number and location of all originals and copies of the Software. The inclusion of a copyright notice on any portion of the Software or Documentation shall not cause or be construed to cause it to be a published work.

3. **Protection of Proprietary Information.**

- (a) Vendor agrees that it will not disclose, provide, or make available any of the Proprietary Information in any form to any person, except to bona fide employees, officers, or directors whose access is necessary to enable Vendor to exercise its rights hereunder, without the SAP's prior written consent.

- (b) Vendor shall not copy, translate, disassemble, or decompile, nor create or attempt to create the source code from the object code of the Software licensed hereunder or use it to create a derivative work, unless authorized in writing by SAP.
- (c) Vendor acknowledges that any disclosure to third parties of Proprietary Information may cause immediate and irreparable harm to SAP, therefore, Vendor agrees to take the same protective precautions to protect the Proprietary Information from disclosure to third parties as it takes with its own proprietary and Proprietary information of a similar nature.

4. Duties Upon Termination.

Upon any termination of the License Agreement or contract between the Ordering Agency and Vendor for the Services hereunder, Vendor shall immediately cease Use of the Proprietary Information, and shall immediately comply with the disposition instructions provided by the Ordering Agency, which shall provide for the removal, return, destruction or erasure of the SAP Proprietary Information from any computer hardware or storage media, and shall require Vendor's certification to SAP, in writing, that it has complied as instructed.

5. No Rights Transferred.

The furnishing of the Proprietary Information for the limited purposes set forth herein does not constitute the grant, option, license, sublicense, assignment, or other form of transfer to Vendor of any rights, title or interest in or to such Proprietary Information.

6. Modifications and Extensions.

Vendor, under the terms of this Agreement, expressly warrants and represents on its behalf, and on behalf of its agents and employees, that no Modifications or Extensions for the licensed Software will be performed without providing prior written notice to SAP. All Modifications and Extensions to the Software owned by SAP shall be considered part of the Software for purposes of this Agreement.

7. Indemnification.

- (a) Vendor agrees to indemnify and defend SAP, its parent, affiliates, its and their officers, directors and employees, from and against any and all loss, claim or damage, including attorney's fees and costs, which SAP may suffer, that arise from or are in any way connected with Vendor's provision of the Services to Ordering Agency or breach of Vendor's obligations hereunder.
- (b) ANYTHING TO THE CONTRARY HEREIN NOTWITHSTANDING, UNDER NO CIRCUMSTANCES SHALL SAP BE LIABLE TO VENDOR, ORDERING AGENCY OR ANY OTHER PERSON OR ENTITY FOR SPECIAL, INCIDENTAL, CONSEQUENTIAL, OR INDIRECT DAMAGES, LOSS OF GOOD WILL OR BUSINESS PROFITS, WORK STOPPAGE, DATA LOSS, COMPUTER FAILURE OR MALFUNCTION, ANY AND ALL OTHER COMMERCIAL DAMAGES OR LOSS, OR EXEMPLARY OR PUNITIVE DAMAGES. The foregoing limitations of liability does not apply to personal injury or death caused by the gross negligence or willful misconduct of SAP.

8. Assignment.

Vendor may not, without SAP's prior written consent, assign, delegate, sublicense, pledge, or otherwise transfer this Agreement, or any of its rights or obligations under this Agreement. Any permitted assignment of this Agreement shall provide that the provisions of this Agreement shall continue in full force and effect and that Vendor shall guaranty the performance of its assignee and shall remain liable for all obligations hereunder.

9. Miscellaneous.

- (a) This Agreement shall be binding upon and inure to the benefit of the parties hereto and their permitted successors and assigns.
- (b) The provisions of this Agreement, together with any agreements incorporated or referred to herein, shall (i) with regard to the subject matter hereof, supersede all prior agreements and negotiations, and (ii) be modified only by a written agreement.
- (c) In the event that any provision of this Agreement shall, for any reason, be determined to be invalid, illegal, or unenforceable in any respect, the parties hereto shall negotiate in good faith and agree to such amendments, modifications, or supplements of or to this Agreement or such other appropriate actions as shall, to the maximum extent practicable in light of such determination, implement and give effect to the intentions of the parties as reflected herein, and the other provisions of this Agreement shall, as so amended, modified, or supplemented, or otherwise affected by such action, remain in full force and effect.
- (d) This Agreement shall be governed by and construed under United States Contract law without reference to its conflicts of law principles.

This Agreement shall be in effect beginning on the date first above written and shall continue in effect until otherwise agreed upon by the parties in writing.

IN WITNESS HEREOF, and intending to be legally bound, the parties have executed this Agreement on the date and year first written above.

SAP PUBLIC SERVICES, INC.

By: Barbora Rivera
Title: Vice President, SAP
Date: 2/8/02

_____(Vendor)

By: _____

Title: _____

Date: _____

_____(Ordering Agency)

By: _____

Title: _____

Date: _____